



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 3582-00
15 December 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board was unable to obtain your service record and based its review on the records you provided and the Naval Discharge Review Board (NDRB) case summary. The Board found that you enlisted in the Marine Corps on 18 December 1990 for five years at age 18. The record reflects that you were advanced to PFC and served without incident until 28 August 1991 when you received nonjudicial punishment (NJP) for an unspecified period of unauthorized absence (UA).

On 4 December 1992 you were formally counseled for being intemperate and uncooperative toward your peers; specifically, arguing with a fellow Marine and breaking both hands when you got mad by striking the ceiling of a maintenance van. The latter incident forced other Marines to fulfill your duties while you were on convalescent leave.

During the three-month period from August to October 1993 you received two more NJPs for bringing discredit upon the armed

Forces by being involved in theft and vandalism at a convenience store and a 27-day period of UA.

On 10 November 1993 you were notified that you were being recommended for discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct. You were advised of your procedural rights, declined to consult with legal counsel and waived your rights. Thereafter, the commanding officer recommended discharge by reason of misconduct due to a pattern of misconduct. A staff judge advocate reviewed the discharge documentation and found it to be sufficient in law and fact. On 13 December 1993 the discharge authority directed discharge under other than honorable conditions by reason of misconduct. You were so discharged on 31 January 1994.

On 12 January 1999, the NDRB upgraded your discharge to general under honorable conditions, noting that you had been uniformly characterized as a respected member of the community, and had made a valid attempt to make amends for the misconduct committed during your period of service.

Regulations authorize discharge for a pattern of misconduct when an individual commits two or more instances of conduct prejudicial to good order and discipline within an enlistment. Such a pattern may include both minor and more serious infractions. Discharge is normally under other than honorable conditions. An honorable discharge is not authorized for a misconduct discharge unless the individual's record is otherwise so meritorious that any other characterization clearly would be inappropriate. Regulations also require that the reason for discharge be shown on a DD Form 214.

In its review of your application the Board specifically noted that you request removal of the reason for discharge, "misconduct-pattern of misconduct", from the DD Form 214 because it adversely affects your employment opportunities. The Board conducted a careful search of available records for any mitigating factors which might warrant such a correction, however, no justification could be found since your discharge was accomplished in compliance with applicable regulations with no indication of procedural errors which would have jeopardized your rights. Applicable regulations require that the specific reason for separation be shown on the DD Form 214. The fact that the reason may adversely affect an individual's future endeavors does not provide a valid basis for changing the reason for discharge. The Board concurred with the findings of the NDRB and concluded that your service was not sufficiently meritorious to warrant a further upgrade to honorable. The further Board concluded that the reason for discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director